

REMARKS

Claims 1-36 are pending in this application, claims 2, 3, 8, 9, 17, 29 and 30 being withdrawn from further consideration. By this Amendment, claims 1, 14, 29 and 30 are amended. Reconsideration of the application is respectfully requested.

The Office Action also objects to the abstract of the disclosure because phrases which can be implied should not be present. Applicant respectfully traverses the objection.

The objection set forth in the Office Action is typically asserted when the abstract includes phrases such as "The present invention includes." This phrase differs significantly from the phrase objected to in the present abstract. In the present abstract, the phrase "A device includes" cannot be implied because it is an essential phrase to the grammatical structure of the sentence and does not use the phrase "the invention," which may be implied. The structure described in the abstract is a device that includes a flask and an applicator. Applicants do not believe that the phrase "a device" may properly be treated as equivalent to the phrase "the invention" as apparently is the basis for the objection.

Mere deletion of the allegedly implicit phrase would be grammatically incorrect. Thus, should the Examiner believe that correction of the abstract is needed, Applicant respectfully requests the Examiner to provide a suggestion for language that would be acceptable while still being grammatically correct. Otherwise, withdrawal of the objection is respectfully requested.

The Office Action rejects claim 14 under 35 U.S.C. §112, first paragraph, as failing to comply with the enablement requirement. Applicant respectfully traverses the rejection.

Claim 14 is amended to properly depend from claim 1, rather than claim 13. Accordingly, the subject matter allegedly not enabled by the specification is no longer recited in claim 14. Accordingly, the rejection is moot and withdrawal thereof is respectfully requested.

The Office Action rejects claims 1, 4-7, 10-16, 18-28 and 31-36 under 35 U.S.C. §103(a) over U.S. Patent No. 4,219,283 to Buckley et al. (Buckley) in view of U.S. Patent No. 4,489,843 to Drozd, Jr. (Drozd). This rejection is respectfully traversed.

Claim 1 recites “a device comprising: a flask comprising a threaded neck, the flask containing at least one of a cosmetic and a care product; and an applicator comprising: a stem; an applicator element disposed at a first end of the stem; and a closure cap supporting the stem at a second end of the stem opposite from the first end, said closure cap comprising a threaded portion arranged to screw onto the neck; wherein the closure cap comprises a ring releasably connected to the threaded portion and arranged to be capable of remaining secured to the neck during removal of the applicator.

As admitted by the Office Action Buckley does not disclose or suggest a ring releasably connected to the threaded portion and arranged to be capable of remaining secured to the neck during removal of the applicator. The Office Action relies on Drozd to allegedly remedy this deficiency of Buckley. Applicant respectfully traverses the asserted combination of Buckley and Drozd to allegedly obtain the subject matter recited in claim 1.

Specifically, Applicant respectfully submits that a person of ordinary skill in the art of devices for packaging and applying cosmetics and care products would not have been motivated to combine the references as alleged by the Office Action. Claim 1 recites that the flask contains at least one of a cosmetic and a care product. Because the device is designed specifically for such contents, a person skilled in the art developing a device for packaging and applying cosmetics and care products would have taken into account concerns particularly relevant to cosmetics and care products. In particular, a person of ordinary skill in the art would have been concerned with the aesthetics of the device, which may be critical to consumer purchasing decisions.

Providing a ring as taught by Drozd on the device of Buckley would result in a separated ring being supported on the shoulder of the container after first use of the device. However, such a result would be non-aesthetic and thus undesirable for a device including a container of a cosmetic or a care product. Further, the non-aesthetic appearance of the detached ring is not correctable because the ring according to Drozd is not removable. Therefore, a person of ordinary skill in the art would not have been motivated to modify the device of Buckley to include the ring structure taught by Drozd when the container of the device includes a cosmetic or a care product, but would have been deterred for aesthetic reasons.

The disclosure of Drozd relates to tamper-evident closures, not to containers that contain cosmetics or care products. A person skilled in the art would not have been motivated to look to Drozd because the tamper-evident concerns addressed by Drozd are not relevant to containers that contain cosmetics or care products. Only when evidence of tampering is important would a person skilled in the art be motivated to apply the teachings of Drozd. Evidence of tampering is not an important concern for containers that contain cosmetics or care products. As discussed above, the aesthetics of such containers is of primary importance.

Because of this concern, the device recited in claim 1 is designed to maintain an aesthetic appearance when an applicator with a relatively long stem and/or bristles is employed with a container that contains a cosmetic or a care product. As illustrated in Figure 3, for example, the longer neck 10 of the container 2 is partly covered by the ring 8 to maintain the aesthetic appearance when the applicator 3 is removed from the container 2.

Moreover, the asserted combination of Buckley and Drozd appears to be based on impermissible hindsight to achieve the invention recited in claim 1. Buckley does not express any concern with tampering, nor does Buckley disclose any contents of the container that

would suggest a need for evidence of tampering. The only motivation alleged by the Office Action is “to enable a user to determine whether or not the cap has been previously removed.” However, such a motivation is only applicable to a container of a substance for which such a determination is important, such as an edible substance like soda pop as mentioned in Drozd. (Col. 1, lns. 13-41.) The container of Buckley is not disclosed as containing an edible substance or any other substance for which such a determination is important. On the contrary, the only concrete example in Buckley is finger nail polish. Thus, although Buckley and Drozd arguably could be combined, there is no motivation to do so to achieve the features recited in claim 1 without impermissible hindsight.

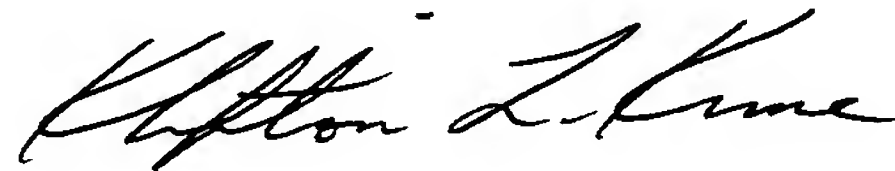
Therefore, Applicant respectfully submits that Buckley and Drozd cannot properly be combined to render the subject matter of claim 1 obvious. Accordingly, claim 1 is patentable over Buckley and Drozd. Claims 4-7, 10-16, 18-28 and 31-36 are patentable over Buckley and Drozd at least in view of the patentability of claim 1 from which they variously depend, as well as for the additional features they recite. Accordingly, withdrawal of the rejection is respectfully requested.

Rejoinder of claims 2, 3, 8, 9, and 17 upon allowance of claim 1, from which they variously depend, is respectfully requested. Further, rejoinder of claims 29 and 30 upon allowance of claim 1 is respectfully requested as these claims are amended to recite subject matter similar to amended claim 1. Thus, claims 29 and 30 should be allowable for at least the reasons claim 1 is allowable.

In view of the foregoing, it is respectfully submitted that this application is in condition for allowance. Favorable reconsideration and prompt allowance of claims 1-36 are earnestly solicited.

Should the Examiner believe that anything further would be desirable to place this application in even better condition for allowance, the Examiner is invited to contact the undersigned at the telephone number set forth below.

Respectfully submitted,



William P. Berridge
Registration No. 30,024

Klifton L. Kime
Registration No. 42,733

WPB:KLK/hs

Attachment:
Petition for Extension of Time

Date: March 20, 2006

OLIFF & BERRIDGE, PLC
P.O. Box 19928
Alexandria, Virginia 22320
Telephone: (703) 836-6400

<p>DEPOSIT ACCOUNT USE AUTHORIZATION Please grant any extension necessary for entry; Charge any fee due to our Deposit Account No. 15-0461</p>
--